82-180

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In The

SUPREME COURT OF THE UNITED STATES
July Term, 1982

NO.

BENJAMIN A. RASKY,
Plaintiff-Appellant,
Petitioner,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNCIL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, a corporation, MARION VOLINI, LEROY BLOMMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITTNER) DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INC., a corporation, and DON ROSE,
Defendants-Appellees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT, FIRST DIVISION

BENJAMIN A. RASKY, Pro Se
Plaintiff-Appellant,Petitioner
5104 West Weber Lane
Skokie, Illinois 60076
Attorney for Petitioner

QUESTIONS PRESENTED

1. Whether Plaintiff was denied Due Process of Law as provided in Section 1 of Amendment XIV of the U. S. Constitution as a result of being precluded from receiving a trial on the merits of his claim in Counts I, II, VI and VII for Libel Per Se when the Court dismissed said Counts based on its application of the Illinois Rule of Innocent Construction contrary to Plaintiff's contention that the Rule did not apply to this case..

2. Whether Plaintiff was denied Due Process of Law by the bias and prejudice of the two Trial Judges against him whereby Plaintiff's Complaint was dismissed on Motions of Defendants on the Pleadings only, not receiving a trial on the merits in his three Notices of Appeal

filed by him, the first two being from Orders dismissing the Complaint, and third Appeal from the Order dismissing the Complaint against a Defendant Albert Griffin with prejudice, when Plaintiff had suggested in open Court the prior death of Griffin which was unknown to the other Defendants and moved to dismiss the Complaint against him without prejudice. There had been no prior determination of Griffin's Motion to Dismiss, or trial on the merits, the Order of Dismissal with prejudice being intended to prevent Plaintiff from proving the charge of Trespass and the invasion of the right of privacy against the remaining Defendants.

3. Whether Plaintiff was denied due process of law in being precluded from receiving a trial on the merits when the Court erroneously dismissed Plaintiff's Complaint on Defendants' Motions on grounds that it did not set forth a good cause of action.

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COLUMBIA BROADCASTING SYSTEM, INC.,
a/k/a CBS-WBBM, Et Al (Same As on Cover),
Defendants-Appellees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT, FIRST DIVISION

To the Justices of the Supreme Court of the United States:

Petitioner, Benjamin A. Rasky, respectfully prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois, First District, First Division, of November 23, 1981, affirming the Orders of the Circuit Court of Cook County, Illinois dismissing Plaintiff's

claim against all Defendants in this suit on their Motions on the Pleadings only, no trial having been had. Plaintiff's Complaint at Law set forth five Counts, I, II, III, IV and V, and the First Amendment thereto set forth two Counts, VI and VII, Counts I, II, VI and VII being for Libel, III for Trespass, IV for Invasion of Right of Privacy, and V for Conspiracy.

OPINIONS BELOW.

The opinion of the Appellate Court is reported as 103 Ill.App.3d 577, reproduced in Appendix "A" to this Petition. Plaintiff's Petition for Leave to Appeal to the Illinois Supreme Court was denied on May 28, 1982, Appendix "B".

JURISDICTION.

The judgment of the Appellate Court of Illinois was entered on November 23, 1981. A

Petition for Rehearing was denied on February 1, 1982. The jurisdiction of this Court rests on 28 U.S.C. §1257(3).

PARTIES.

All parties to this proceeding are set forth on the cover.

STATEMENT OF THE CASE.

Plaintiff's Complaint at Law sets forth five Counts, I, II, III, IV, V and the First Amendment to Complaint sets forth two Counts, VI and VII for Libel, Counts I and II also being for Libel, Count III for Trespass, IV for Invasion of Right of Privacy, and V for Conspiracy. All of the Counts allege that, prior to the alleged occurences, Plaintiff was an attorney at law in Chicago, Illinois since 1929, an owner and operator of real estate for purposes of investment, a person of good reputation and name and deservedly held in high esteem in the community. Maliciously intending to injure and ruin him, as charged in the various Counts, in the operation of his Real Estate and Profession as a Lawyer, the Defendants unlawfully and without authority from

Plaintiff, entered on February 18, 1977, his building at 5625 Winthrop (Count I) set up equipment for transmission over Television Channel 2, took pictures of the building, and unlawfully broadcast the following false slander and libel against him "Factfinder Report Aired on WBBM-TV 2/18/77": to-wit:

> "ANDERSON: There's a law on the books which makes it a crime for a landlord to neglect his property and jeopardize the health and safety of his tenants. That law has never been used, until now. Citizens of the Edgewater community -- primarily those who live in the Kenmore-Winthrop corridor -- are now using this law to strike back. People here are fed up with their neighborhood deteriorating. One eyesore they've targeted is Touraine. The building's owner is Benjamin Rasky, a La Salle Street lawyer. Edgewater citizens say Rasky is a slumlord. To back up their charge, they point to falling plaster, peeling paint, exposed wiring and rats. One tenant here is Albert Griffin.
>
> GRIFFIN: I noticed the toilet wouldn't flush, so I tried the facebowl. There weren't no water. Then I tried the bathtub -- no water. (At this point, Mr. Griffin made a point concerning the controls under the sink which was inaudible.)
>
> ANDERSON: And how much have you paid for this place? What's the rent?

GRIFFIN: One-hundred and twenty-five dollars.

ANDERSON: That one-hundred and twenty-five dollars figure is the maximum public aid lets its recipients pay for a so-called furnished apartment. Residents who live near this building say it was an attractive place... that is, until Rasky took it over three years ago. Dave Walker, Edgewater Community Council...

WALKER: He just milked this building for whatever he could get out of it. He hasn't put anything into it. And, a building of this size, it's attracted the types of persons that are perpetrating much of the crime in this area.

ANDERSON: The citizens here have hauled Rasky into housing court for years...but they say he merely pays the fines for building violations as a cost of doing business and never bothers with repairs. At that point, the district's state representative found the slumlord law on the books. The result? Today, the state filed a complaint. Ellis Levin, 12th District Representative...

LEVIN: Clearly, in cases like this, the traditional remedies, uh, building court and also criminal housing management are just not working. And so, you know, through the approach of going after an individual's livelihood, his real estate license, hopefully we'll be able to exert an awful lot more influence in the future. It's a new vehicle, available to government and available to community groups.

ANDERSON: If Rasky is found guilty, his real estate license can be revoked. That means he can no longer buy, sell, rent or manage any property ever again in this state. Rasky was too ill to be interviewed today but he did tell me he is not a slumlord. He says he's been plagued with people who have moved in as squatters, with building managers who have pocketed his rents and with police who have not curbed the vandals and hoodlums. Walter.....

Included are the following false utterances of slander and libel (Record 4): claimed to be Libel Per Se:

SUSAN ANDERSON: (duly authorized agent of the Defendant Columbia Broadcasting System CBS-WBBM):'. . . (referring to Plaintiff) Edgewater citizens say Rasky is a slumlord. To back up their charge, they point to falling plaster, peeling paint, exposed wiring and rats. One tenant here is Albert Griffin.

GRIFFIN: 'I noticed the toilet wouldn't flush, so I tried the facebowl. Then I tried the bathtub -- no water.'

ANDERSON: 'And how much have you paid for this place? What's the rent?'

GRIFFIN: 'One-Hundred and twenty-five dollars.'

ANDERSON: 'Dave Walker, Edgewater Community Council.'

WALKER: 'He just milked this building for

whatever he could get out of it. He hasn't put anything into it. And, a building of this size, it's attracted the types of persons that are perpetrating much of the crime of this area.'

ANDERSON: The citizens here have hauled Rasky into housing Court for years... but they say he merely pays the fines for building violations as a cost of doing business and never bothers with repairs. At that point, the district's state representative found the slumlord law on the books. The result? Today, the state filed a complaint. Ellis Levin, 12th District Representative ..."

Defendant Walker was the duly authorized agent of the defendants Edgewater Community Council, Volini and others.

Count II repeats Count I adding further libelous statements, including those of defendant Levin concerning the Plaintiff:

"I hope this will set a strong precedent for the future widespread use of this rule in the fight against slum landlords" and: "The case would prove to be a landmark that opens up a whole new way to go after slum landlords (Rec.4-5)."

Count III is a charge of Trespass committed by the defendants in wrongfully entering Plaintiff's building to commit the above acts.

Count IV is the same as Count III except charging an Invasion of the Right of Privacy.

Count V is a claim for Conspiracy that all of the original defendants, excluding CBS and Anderson, on February 27, 1976, entered into a conspiracy against Plaintiff to injure and ruin him as aforesaid by a campaign of harrassment, creation of false and harmful publicity creating dissension and destruction and refusal by tenants to pay rent, posting false and vicious signs in his buildings and creating false publicity throug medium of newspapers, TV and radio broadcasting to include February 18, 1977, T.V. broadcast, set forth in Count I. Count VI of first amendment is a claim for libel against Levin consisting of a News Bulletin distributed by him on December 11, 1977, stating the following:

> "FIRST COMPLAINT FILED TO REVOKE SLUMLORD'S REAL ESTATE LICENSE. A new method for combatting slum landlords was developed when Rep. Levin, Edgewater Community Council Safety Program and Edgewater Residents Together In Action (ERTA) filed the first complaint with the Ill.Dept. of Registration and Education to revoke a landlord's real estate broker license.
>
> The approach is aimed at stopping slum

> landlords when Building Court fails. 'If a slumlord's license is threatened,' Levin said, 'he is more likely to clean up the building.' The complaint charged that Benjamin A. Rasky operated four buildings with dangerous conditions and several hundred building code violations at 5303-09, 5621-25 and 5726-28 Winthrop and at 832 Gunnison."

and Count VII is a claim for Libel vs Chicago Reader and Don Rose for the publication in the Reader on November 11, 1977, of the false libel against Plaintiff stating the following:

"Why Ellis Levin is a Marked Man" containing the following false libel of and concerning the Plaintiff:

> "One agency he recently got to do its job is the Illinois Department of Registration and Education, which licenses real estate operators but never saw fit to crack down on slum landlords until Levin lit the fuse. The result: for the first time in history a slum landlord operating in Uptown, Benjamin A. Rasky, is under the gun to fix up his places or lose his license."

All of the Defendants filed Motions to Dismiss Plaintiff's Complaint setting forth contentions that Counts I, II, VI and VII were unenforceable under the Illinois Rule of Innocent Construc-

tion, and Counts III, IV and V failed to allege a good cause of action.

In the TV Broadcast of February 18, 1977, Defendant Anderson refers to Defendant Albert Griffin being a tenant in the building. The reference to his being a tenant was false. Griffin was not a tenant in the building on the date of the broadcast and did not pay any $125.00 rent mentioned in the broadcast. He had been evicted by the Plaintiff from the building following a Judgment for Possession against him on May 4, 1973 in case No. 73M 64024 Circuit Court for non-payment of rent. He was refused readmission thereafter. He had been suspected of improper conduct because of too many callers, the building being a furnished apartment hotel. He was a trespasser on February 18, 1977 as were all the other Defendants, his alleged invitees.

The matter was on call for hearing on May

17, 1979 of Defendants' Motion to Dismiss Plaintiff's Complaint before Paul V. Elward. Plaintiff moved for a postponement of the hearing by reason of illness to which there was no objection.

Defendant Griffin's counsel then suggested that the matter be heard on Pleadings and not orally, Plaintiff then stated that Griffin's counsel need not argue further and then suggested the prior death of Griffin on August 1, 1978 (which his counsel did not know) and moved to dismiss without prejudice the Complaint against Griffin. Plaintiff then offered to draft the Order, to include a new hearing date of June 27, 1979, but counsel for Defendants CBS and Anderson, Attorneys Reuben & Proctor, of which Don Reuben is the head, suggested drawing the Order.

Judge Elward thereupon directed Reuben & Proctor to draft the Order and return it to Court in the afternoon. That firm was not counsel for

Griffin. When Plaintiff appeared in Court in the afternoon, he noticed that the Order dismissing the Complaint was with prejudice, the Order having been entered out of his presence.

The entry of the dismissal against Griffin with prejudice is very damaging to Plaintiff's being able to prove his case. Plaintiff learned later that Don Reuben is Judge Elward's personal Attorney, of which Plaintiff was unaware.

On June 21, 1979, Plaintiff moved for a Change of Venue before Judge Elward which was denied on June 24, 1979. Thereafter, on August 7, 1979 Judge Elward recused himself from the case on a Petition by Attorneys Reuben & Proctor on the ground that he had retained them on July 30, 1979 to represent him personally in a personal case. Plaintiff then learned that Don Reuben represented Judge Elward in a matter before the Judicial Inquiry Board on February 9,

1977 which anteceded Plaintiff's lawsuit. These allegations were set forth in Plaintiff's Motion on February 4, 1980 to vacate the Order of May 17, 1979 before Judge Elward and who transferred the hearing to Judge Myron Gomberg who denied Plaintiff's Motion on February 15, 1980, now on appeal.

Every Motion presented by Defendants before Judges Elward and Gomberg were granted summarily without permitting argument by Plaintiff. Included was one presented on April 24, 1980 to dismiss the Complaint with prejudice by the Organization of the Northeast (Rec.284-285) where Defendants' counsel inserted four times "Plaintiff Rasky stating that he had no objection to said Motion to Dismiss with Prejudice". Plaintiff tried to say that he would not argue the Motion, and started to run a line through the first such recitation, so as to state his objections to it. Defendants' counsel grabbed the Order away from the Plain-

tiff and rushed to Judge Gomberg for his signature, which he signed at once. When Plaintiff tried to argue against the Order, Judge Gomberg threatened to call the Sheriff.

When Plaintiff purchased the building in 1972 he learned that the managing couple were collecting unauthorized security deposits of $50.00 without the knowledge of the owner, Warren, and converted said sums to their own use. As a consequence, unscreened tenants were permitted to rent, resulting in immoral and criminal practices taking place. Open solicitation for prostitution was the result, with renting by the night.

The managing couple was immediately discharged, a new manager was engaged, with a Security Guard and the Police alerted. Order and decency was restored by such move by the Plaintiff.

All of the Defendants' Motions to Dismiss, and otherwise, were sustained.

As a supplement to the statement of the case to reiterate Plaintiff's problems in trying to manage the buildings:

An example was the building at 5726 North Winthrop. It was in Housing Court for building violations. Plaintiff spent over $25,000.00 to rehabilitate it. The Housing Court case was dismissed as complied on September 26, 1976. One month later, the building was wrecked again. Plaintiff collapsed and he thereupon entered a hospital for open heart surgery as herein noted.

REASONS FOR GRANTING WRIT.

Petitioner respectfully submits that the Appellate Court of Illinois erred in affirming the decisions of the Circuit Court which dismissed his Complaint, and otherwise, for the following reasons: (1) Counts I, II, VI and VII on the ground of the application of the Illinois Rule of Innocent Construction; they are Libel Per Se, being defamatory on its face, which, if true, would constitute commission of criminal offenses by him of "Criminal Housing Management" (Chap.38,Sec.12-5.1 Criminal Code, Ill.Stats.), which on conviction, could subject him to imprisonment of up to one year, and a fine of up to $1,000.00 or both, as well as other criminal offenses; also, a charge of unfitness in the occupation in which he was engaged (the operation of real estate), and the false charges also affected injuriously Plaintiff in his profession as a Lawyer (though Libel per quod

in the latter); (2) Dismissing Counts III, IV and V for failure to allege a cause of action; and (3) in denying Plaintiff's Petition under Sec. 72 of the Illinois Civil Practice Act (for errors of fact not of record) to vacate the Griffin Dismissal "with prejudice"when it should have been "without prejudice", as he had moved, for no adjudication was ever made on the merits. "A dismissal with prejudice denotes an adjudication on the merits and is res judicata."

Bernhardt v. Fritzshall, 9 Ill.App.3d 1041

Esquire, Inc. v. Varga Enterprises, 185 F.2d 14

It was a denial of due process of law, Sec. 1 of Amendment XIV, U. S. Constitution.

A leading case on Slander and Libel, Whitby v. Associates Disc.Corp. 59 Ill.App.2d 337 (1965) provides:

Slander and Libel (Per Se) - five classes of words give rise to cause of action for Slander if falsely communicated: (1) those imparting

commission of a criminal offense; (2) those imparting infection with communicable disease tending to exclude one from society; (3) those imparting inability to perform or want of integrity in discharge of duties of office or employment; (4) those prejudicing a particular party in his profession or trade, (5) Defamatory words which though not in themselves actionable occasioned the party special damages (the 5th Class does not apply to libel per se. Libel per se cases require no allegation of proof of special damages. Yet Plaintiff did submit such proof in his Answer, and Affidavit in Support, of special damages.

Criminal Housing Management in the Statute is defined:

> A person commits the offense of Criminal Housing Management when, having personal management or control of residential real estate,.....he knowingly permits by his gross carelessness a neglect of the physical condition or facilities to become or remain so deteriorated that the health or safety of any inhabitant is endangered.

Although the Court is well aware of Sec.1, Amendment XIV of the U.S.Constitution, referring to Due Process of the Law, in the light of Plaintiff's claim, the applicable provision is the following:

> .....No State shall invoke or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Court should note that, with the exception of its Decision on Libel, the other three charges are cited passively by the Appellate Court on Page 1, Paragraph 2 of its Opinion, as follows:

On appeal, Plaintiff claims that the trial Court erred in dismissing Plaintiff's Complaint charging Defendants with defamation, trespass and invasion of privacy. We have considered Plaintiff's arguments regarding the trespass and invasion of privacy issues and find them

to be without merit. We will, therefore, limit our discussion to the defamation issues raised by Plaintiff.

We affirm.

Nothing was mentioned on Conspiracy (Count V), the prejudice of the trial Judges against Plaintiff to his injury, or otherwise; all that was error, and a denial of due process of law.

The Court should bear in mind the Illinois Rule of Innocent Construction which provides:

> "Libel - words alleged to be libelous must be read innocently if entire context warrants. In a suit for damages for an alleged libelous publication, the article is to be read as a whole and the words given their natural and obvious meaning and words allegedly libelous that are capable of being read innocently must be so read and declared non-actionable as a matter of law."
>
> John v. Tribune, 24 Ill.2d 457 (1962)
> Valentine v. North American Co.
> 60 Ill.2d 168

However, the Rule does not apply to this case. In its determined effort to find that the Libel comes under the Illinois Rule of Innocent Construction and thereby dismiss Appellant's (Petitioner's) Complaint, the Court only cited law to support it in its decision. Such action was a denial of due process of law as guaranteed Plaintiff under Sec. 1, Amendment XIV of the U. S. Constitution.

Evidence of that is the following (on Page 5 of its Opinion) :

> "In order to determine whether particular language constitutes libel per se, Illinois Courts employ the 'rule of innocent construction.' The rule holds that an allegedly libelous statement is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared non-actionable as a matter of law. (Valentine v. North American Co., etc. 60 Ill.2d 168....John v. Tribune 24 Ill. 2d 437. If a statement is capable of two constructions, one of them defamatory and the other innocent, the innocent construction must be so chosen."

The foregoing is not the complete John v. Tribune decision. Before the recitation "the article"(statement here) is to be read as a whole, John states "words alleged to be libelous must be read innocently if entire context warrants."

Neither is the foregoing the complete Valentine decision which provides:

> "Defamation....in a defamation suit the intent and meaning of the statement must be determined from its context. The legal effect of a statement cannot be considered independently from the entire conversation of which it was a part, and the intent and meaning of a statement

> claimed to be defamatory must be determined from the context of the entire statement."

Contrary to Defendant Anderson's false allegations that "he merely pays the fines for building violations as a cost of doing business and never bothers with repairs", and Defendant Walker's false allegations that "he just milked this building for whatever he could get out of it; he hasn't put anything into it," the Plaintiff never paid any fines at the time of the TV Broadcast; that as a result of Plaintiff's great difficulties in trying to operate the buildings in a changing area with great vandalism with little, finally no income to meet expenses, he sustained operating losses of $152,543.00 from 1975-77, mortgage foreclosure loss of $80,000.00, loss in forced sale of two buildings of $253,000.00 and $47,530.00 loss in 1978, totalling in all losses of $533,073.00. Plaintiff collapsed, underwent open-heart surgery and had to sacrifice the buildings by reason of

the premises. The Rule of Innocent Construction should not apply here.

Contrary to Anderson's false allegations, that Residents who live near this building say it was an attractive place.....that is, until Rasky took it over three years ago", as Plaintiff mentioned in his "Statement of the Case", upon his purchase of it, he learned that it was veritably 'a house of prostitution', and he was compelled to discharge the managers under the previous ownership and put it in order. The Rule of Innocent Construction should not apply here.

Contrary to Anderson's false statement "One tenant here is Albert Griffin";Griffin was not a tenant on the date of the broadcast, having been evicted in 1973, and did not pay any rent and was a trespasser as were all of his invitees." And her statement "Edgewater citizens say Rasky is a slumlord"were untrue. Her statements of attempting to interview Plainti

are false. The Rule of Innocent Construction should not apply here.

Statements in the Conspiracy charges by Plaintiff, Count V.

"Slumlords like Ben Rasky are destroying buildings along Kenmore and Winthrop; Rasky has milked and abandoned buildings in the 5300, 5600 and 5700 Blocks of Winthrop; that he never bothers to pay taxes," are false. He never had any buildings on Kenmore, and never abandoned the buildings on Winthrop. In the large buildings Plaintiff owned, he paid all taxes, leaving only one small item for which he filed a Certificate of Error Procedure for 1973 taxes, and paid it immediately on the adjudication of $2,987.00 as being due.

Similarly, the Court in its determination to apply the Rule of Innocent Construction (Opinion 6) defines Slumlord and Slum Landlord from the definition by Black's Law Dictionary of a Slum as one who "owned buildings in a poor

and dirty neighborhood or, simply stated that Plaintiff was a landlord in a slum".

If that is to be taken as a correct definition, then the owners of many fine buildings in Chicago "in poor and dirty neighborhoods" can be considered to be "slumlords". A more adequate definition of slumlord is set forth in Webster's New World Dictionary which defines "slumlord" as an absentee landlord of slum dwellings especially one who charges inflated rents and neglects upkeep".

Plaintiff did not fit that definition nor the charges of Defendants CBS, Ellis Levin, Chicago Reader and Don Rose of his being a Slumlord. The Rule of Innocent Construction should not apply here.

Yet the Court ignored it and citations from American Law Reports (49 ALR 3d 1074). In one case the Court held that it was libelous <u>per se</u> to charge that a housing project was becoming a

slum (Munhall Homestead Hsg. Ass'n. v. Missinger,Dist.Co.25 Pa.D C.2d 1). Another case held that it was slanderous to accuse a landlord of being a "Black Marketeer" (Notamuzzi v. Shevack,Sup. 108 N.Y.S.2d 172), and slanderous per se. The latter case in effect was the false imputation on the part of Defendant Anderson on her interview with Griffin where she asked him how much rent he paid for the place. He told her $125.00, whereupon she said - "That $125.00 figure is the maximum Public Aid lets its recipients pay for a so-called furnished apartment."

Griffin's statement was false for he was not a tenant on the date of the broadcast and did not pay $125.00 rent mentioned in the broadcast. He had been evicted in 1973 as previously set forth in Pages 12-15 herein and was a Trespasser as was the CBS and all the other Defendants. Plaintiff sets forth good causes of action in Counts III and IV for Trespass

and Invasion of Right of Privacy and V for Conspiracy (in the latter, CBS and Anderson are not Defendants), the Complaint being in the Record.

Counts III, IV and V contained such information as reasonably informed the Defendants of the nature of the claim which they were called upon to meet.

Heuer v. Davis, 336 Ill.App.224

Parrino v. Landon, 8 Ill.2d 468

As set forth in Pages 13[14] and 18 hereof and elsewhere, there was no adjudication on the merits to warrant dismissal of the Complaint against Griffin with prejudice. Because there was no trial, the Complaint being determined on Pleadings only, Plaintiff had the privilege at any time to dismiss the Complaint without prejudice as requested by him. The Order of February 15, 1980 was entered improperly as was the Order of May 17, 1980. The bias and hostility of Judges Elward and Gomberg against

Plaintiff are set forth therein as well as on Pages 13-16 herein. Both trial Judges, Elward and Gomberg should have disqualified themselves because of their bias towards Plaintiff and Judge Elward's relationship with Attorney Don Reuben, the CBS-Susan Anderson Counsel.

Fairness requires absence of actual bias in the trial of cases.

> Hobson v. Hansen, 265 F.Supp.902 (1967)
>
> "Bias or prejudice is a ground for disqualifying a Judge from hearing a cause."
>
> People v. St. Louis Merchants Bridge Co., 282 Ill. 408

It was a denial to Plaintiff of Due Process of Law, Sec. 1, Amendment XIV, U.S.Constitution. Error was committed accordingly.

The Court seems to treat too lightly the harmful effects of defamation of character of the person vilified, here the Plaintiff, in attempting to apply the Rule of Innocent Con-

struction, used in Illinois, for the purpose of declaring claims in Slander and Libel non-actionable by reason thereof. Long-lasting injury may be the natural consequence therefrom to the persons vilified, here the Plaintiff. And the Plaintiff has sustained such injuries as a direct result of the conduct of the Defendants.

The libelous utterances of the Defendants of and concerning the Plaintiff must be determined from the context of the entire statements. Although the context of the entire statements of the Defendants were libelous, being per se, except for the reference to the Plaintiff as "a LaSalle St. Lawyer", which was libelous per quod, yet the Courts, both trial and Appellate, arbitrarily used the application of the Illinois Rule of Innocent Construction in making their decisions. They thereby declared erroneously the statements

non-actionable and dismissed Plaintiff's claims. There was no justifiable reason for the application of the Rule other than to deny Plaintiff the right to a trial which was his due.

> "The absolute fundamentals of 'due process of law', are jurisdiction, adequate notice and a fair hearing."
>
> U. S. v. Parcels of Land (40 F.Supp.136 (1941)

Denial of due process is conduct that shocks conscience and offends sense of justice.

Buder v. Bell, 306 F.2d 71 (1962)

The use of the Rule of Innocent Construction, as used here, was a denial of due process of law in violation of the 14th Amendment,Sec. 1 of the U. S. Constitution.

The questions of the unconstitutionality of the Orders of Dismissal of the Complaint or otherwise by the Trial Court on Pleadings only were raised on oral comment by Plaintiff during

hearings, and raised in the Appeal to the Appellate Court of Illinois in Plaintiff's filing of the Docketing Statement on June 12, 1980, in his Brief and Argument and every other Pleading thereafter.

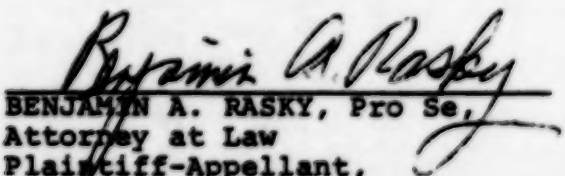
This action was brought by Plaintiff, pro se, to recover damages against the Defendants by a Complaint in five Counts, I and II for Libel, III for Trespass, IV for Invasion of Right of Privacy, V for Conspiracy, and a First Amendment to the Complaint labeled Counts VI and VII for Libel. The first five Counts were never amended, Attorney's Orders were entered thereon as though amended. Count I is still pending without any Orders of Dismissal or otherwise against all of the original Defendants, as is Count II against all, but the Organization of the Northeast. Counts III and IV are still pending against all the original Defendants, except Volini, Bittner

and Edgewater Residents Together In Action. Count V is pending against Levin, Edgewater Community Counsel and Walker. As to these Counts and Defendants, the Court accordingly erred in any event.

CONCLUSION.

WHEREFORE, Plaintiff-Appellant, the Petitioner herein, respectfully prays that this Court's Writ of Certiorari issue and the Judgment below be reversed, and the Cause be remanded to the Circuit Court of Cook County for trial.

Respectfully Submitted,



BENJAMIN A. RASKY, Pro Se,
Attorney at Law
Plaintiff-Appellant,
5104 West Weber Lane
Skokie, Illinois 60076
679-8992
Petitioner

BENJAMIN A. RASKY, Plaintiff-Appellant,	)	
	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
-v-	)	COOK COUNTY
	)	
COLUMBIA BROADCASTING SYSTEM, INC.,a/k/a CBS-WBBM, et al., Defendants-Appellees.	)	HONORABLE MYRON GOMBERG PRESIDING.

Mr. Justice McGloon delivered the Opinion of the Court:

Reported as 103 Ill.App.3d 577

Plaintiff, pro se, instituted an action to recover damages from defendants for defamation, trespass, invasion of privacy and civil conspiracy. The trial court granted defendants' motion to dismiss plaintiff's complaint. Plaintiff now appeals.

On appeal, plaintiff claims that the trial court erred in dismissing plaintiff's complaint charging defendants with defamation, trespass and invasion of privacy. We have considered plaintiff's arguments regarding the trespass and invasion of privacy issues and find them to be without merit. We will therefore limit our discussion to the defamation issues raised by plaintiff.

We affirm.

Before we discuss the merits of the issues raised in this appeal, it is essential that we print in full the allegedly defamatory statements which inspired the suit brought by Benjamin Rasky (plaintiff). On February 18, 1977, defendant Columbia Broadcasting System, Inc.(CBS) broadcast a news telecast prepared and delivered by defendant Susan Anderson. The text of the telecast reads as follows:

"ANDERSON: There's a law on the books which makes it a crime for a landlord to neglect his property and jeopardize the health and safety of his tenants. That law has never been used, until now. Citizens of the Edgewater community--primarily those who live in the Kenmore-Winthrop corridor--are now using this law to strike back. People here are fed up with their neighborhood deteriorating. One eyesore

they've targeted is Tourraine [sic]. The building's owner is Benjamin Rasky, a LaSalle Street Lawyer. Edgewater citizens say Rasky is a slumlord. To back up their charge, they point to falling plaster, peeling paint, exposed wiring and rats. One tenant here is Albert Griffin.

GRIFFIN: I noticed the toilet wouldn't flush, so I tried the facebowl. There weren't no water. Then I tried the bathtub--no water. (At this point, Mr.Griffin made a point concerning the controls under the sink which was inaudible.)

ANDERSON: And how much have you paid for this place? What's the rent?

GRIFFIN: One-hundred and twenty-five dollars.

ANDERSON: That one-hundred and twenty-five dollar figure is the maximum public aid lets its recipients pay for a so-

called furnished apartment. Residents who live near this building say it was an attractive place***that is, until Rasky took it over three years ago.

ANDERSON: Dave Wallher[sic], Edgewater Community Council***

WALLHER [sic]: He just milked this building for whatever he could get out of it. He hasn't put anything into it. And, a building of this size, it's attracted the types of persons that are perpetrating much of the crime in this area.

ANDERSON: The citizens here have hauled Rasky into housing court for years *** but they say he merely pays the fines for building violations as a cost of doing business and never bothers with repairs. At that point, the district's state representative found the slumlord law on the books. The result? Today, the state filed a complaint. Ellis Levin, 12th District Representative *** .

LEVIN: Clearly, in cases like this, the traditional remedies, uh, building court and also criminal housing management are just not working. And so, you know, through the approach of going after an individual's livelihood, his real estate license, hopefully we'll be able to exert an awful lot more influence in the future. It's a new vehicle, available to government and available to community groups.

ANDERSON: If Rasky is found guilty, his real estate license can be revoked. That means he can no longer buy, sell, rent or manage any property ever again in this state. Rasky was too ill to be interviewed today, but he did tell me he's not a slumlord. He says he's been plagued with people who've moved in as squatters, with building managers who've pocketed his rents and with police who've not curbed the vandals and hoodlums. Walter***"

On February 20, 1977, defendant Gloria Bittner, chairperson of defendant Organization of the Northeast (ONE), gave a speech in which she mentioned plaintiff. She said:

"The traditional building court route has failed to force Rasky to bring these buildings into full compliance, despite the arsenal used by judges, such as orders, fines, contempt citations, injunctions, receiverships and escrow arrangements."

Plaintiff's complaint attributed four allegedly defamatory statements to defendant Representative Ellis B. Levin. In a televised interview, Levin stated:

"Clearly, in cases like this, the traditional remedies, uh, building court and also criminal housing management are just not working. And so, you know, through the approach of going after an individual's livelihood, his real estate license, hopefully, we'll be able to exert an awful lot more influence

in the future. It's a new vehicle, available to government and available to community groups."

Levin was quoted in the Sunday Star as saying:

"I hope this will set a strong precedent for the future widespread use of this rule as a new weapon in the fight against slum landlords."

He was quoted in the Chicago Tribune as saying:

"The case would prove to be a landmark that opens up a whole new way to go after slumlords."

Levin distributed the following news bulletin to his constituents:

"FIRST COMPLAINT FILED TO REVOKE SLUMLORD'S REAL ESTATE LICENSE.

A new method for combatting slum landlords was developed when Rep.Levin, Edgewater Community Council Safety Program and Edgewater Residents Together in Action (ERTIA) filed the first complaint with the

Ill.Dept. of Registration and Education to revoke a landlord's real estate broker license.

The approach is aimed at stopping slum landlords when Building Court fails. 'If a slumlord's license is threatened,' Levin said, 'he is more likely to clean up the building.' The complaint charged that Benjamin A. Rasky operated four buildings with dangerous conditions and several hundred building code violations at 5303-09, 5621-25 and 5726-28 Winthrop and 832 Gunnison."

On November 11, 1977, defendant Chicago Reader, Inc. published an article entitled "Why Ellis Levin Is A Marked Man," The article was written by defendant Don Rose. It stated:

"One agency he [Ellis Levin] recently got to do its job is the Illinois Department of Registration and Education, which licenses real estate operators but never saw fit to crack down on slum landlords until Levin

lit the fuse. The result: for the first time in history a slum landlord operating in Uptown, Benjamin A. Rasky, is under the gun to fix up his places or lose his license."

Plaintiff alleged in the trial court that each of the aforementioned statements was libelous. All of the defendants moved to dismiss plaintiff's complaint for failure to state a cause of action. The trial court granted defendants' motions and plaintiff now appeals.

In order to determine whether particular language constitutes libel per se, Illinois courts employ the "rule of innocent construction." The rule holds that an allegedly libelous statement is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law. (Valentine v. North American Co. for Life and Health Ins. (1974), 60 Ill.2d 168, 171, 328

N.E.2d 265; John v. Tribune Co. (1962), 24 Ill.2d 437, 442, 181 N.E.2d 105, cert. den. (1962), 371 U.S.877, 9 L.Ed.2d 114, 83 S.Ct. 148.) If a statement is capable of two constructions, one of them defamatory and the other innocent, the innocent construction must be chosen. Whether the language used is susceptible of an innocent construction is a question of law to be resolved by the courts. 60 Ill.2d at 171; Zeinfeld v. Hayes Freight Lines, Inc. (1968), 41 Ill.2d 345, 347, 243 N.E.2d 217.

Plaintiff was referred to as a "slum landlord" or "slumlord" by several of the defendants in this action. Black's Law Dictionary defines a "landlord" as one who, "being the owner of an estate in land, or a rental property, has leased it to another person***." (Black's Law Dictionary 790 (5th ed.1979).) It defines "slum" as a "squalid,run-down section of a city, town or village, ordinarily inhabited by the very poor and destitute classes ***." (Black's Law

Dictionary 1245 (5th ed.1979).) Based on these definitions and applying the innocent construction rule,the terms "slum landlord" and "slumlord" can be construed to mean that plaintiff owned buildings in a poor and dirty neighborhood or, simply stated, that plaintiff was a landlord in a slum.

In the trial court, plaintiff attempted to avoid the legal impact of the innocent construction rule by offering other dictionary definitions of the phrase "slum landlord." In effect, he suggested that if any conceivable definition of the phrase might be defamatory, then it cannot be innocently construed. We believe the trial court properly rejected plaintiff's interpretation of the rule. We agree that a proper application of the rule of innocent construction necessitates a finding that the term "slumlord" or "slum landlord" as used in the several publications, is susceptible of an innocent construction.

Moreover, the meaning of an allegedly libelous statement must be gathered not only from words singled out, but also from the context of the statement. (Bravo Realty,Inc. v. Columbia Broadcasting System, Inc. (1980), 84 Ill.App.3d 862,865,406 N.E.2d 61.) It must be determined whether the "gist" or "sting" of the statement, taken as a whole, is capable of an innocent construction. (See Kilbane v. Sobonjian (1976), 38 Ill.App.3d 172, 347 N.E. 2d 757.) The overall thrust of the CBS news telecast was that citizens in the community were bitterly opposed to the way in which they perceived that plaintiff managed his buildings and, that through their representatives, they intended to explore available legal remedies for redress. In that context, the report noted that Edgewater citizens: have accused plaintiff of being a "slumlord"; have previously taken legal action against him; claim he does not make repairs. In our opinion, the CBS news telecast, taken as a whole,

is capable of an innocent construction and cannot be considered defamatory as a matter of law.

Similarly, we believe that the statement attributed to defendant Gloria Bittner can be innocently construed. Bittner simply asserted that the courts have failed to force plaintiff to comply with the building code. Her statement was a criticism of the judicial system rather than an impugnment of plaintiff. It therefore must be considered nonactionable as a matter of law.

A reason why plaintiff's claim against all defendants must fail is that publication of a falsehood is not libel per se unless, on its face, it charges: (1) commission of a crime; (2) infection with a loathsome disease; (3) unfitness or want of integrity in performing the duties of an office or employment; or (4) lack of ability in plaintiff's business, trade or profession. (Makis v. Area Publications

(1979), 77 Ill.App.3d 452, 456, 395 N.E.2d 1185; Bruck v. Cincotta (1978), 56 Ill.App. 3d 260, 264, 371 N.E.2d 874.) An action based on libel per se requires a serious charge of incapacity or misconduct in words so obviously and naturally hurtful that proof of their injurious character is dispensed with. 77 Ill. App.3d at 456.

Plaintiff claims that the allegedly defamatory statements made by all defendants (except Gloria Bittner and ONE) are libelous per se because they charge him with the commission of a crime. More specifically, he maintains that the publications charged him with the crime of Criminal Housing Management (Ill.Rev.Stat.1979, ch.38, par.12-5.1(a).) This statute provides that one is guilty of the offense of criminal housing management when he "knowingly permits by his gross carelessness or neglect the physical condition or facilities of the residential real estate to become or remain so deteriorated that

the health or safety of any inhabitant is endangered." Illinois cases have held that words imputing the commission of a crime are libelous per se only if the offense is indictable, involves moral turpitude and is punishable by death or imprisonment rather than by a fine. (Bruck v. Cincotta (1978), 56 Ill.App.3d 260,264,371 N.E. 2d 874; Reed v. Albanese (1966), 78 Ill.App.2d 53,60,223 N.E.2d 419.) Even if we were to accept plaintiff's argument that the publications charged him with the commission of this crime, it still would be insufficient to support a charge of libel per se since such an accusation is in no way tantamount to a charge of involvement in a crime involving moral turpitude.

Additionally, plaintiff contends that defendants' statements impugned his professional fitness as a lawyer and as a real estate operator. In a license revocation proceeding before the Illinois Department of Registration and Education, plaintiff filed an affidavit in which he represented

that the practice of law was his sole vocation from 1929 to the date of the affidavit, April, 1977. In light of this representation, he cannot now claim that his professional reputation as a real estate operator was impugned. Since none of defendants' statements alluded to plaintiff's qualifications or competence as a lawyer, we must reject plaintiff's contention that his professional fitness as a lawyer was attacked. See generally Reed v. Albanese v. Albanese (1966), 78 Ill.App.2d 53, 223 N.E. 2d 419; Hambric v. Field Enterprises,Inc. (1964), 46 Ill.App.2d 355, 196 N.E.2d 489.

For the foregoing reasons, we affirm the trial court order dismissing plaintiff's claim against all defendants in this suit.

ORDER AFFIRMED.

CAMPBELL,P.J. and GOLDBERG,J.,Concur.

ILLINOIS SUPREME COURT
Supreme Court Building
Springfield, Illinois
62706
(217) 782-2035

APPENDIX B -2A-

H.Wayne Russell
Clerk

May 28, 1982

Mr. Benjamin A.Rasky
5104 West Weber Lane
Skokie, Il. 60077

No.56293 - Benjamin A. Rasky, petitioner, vs. Columbia Broadcasting System, Inc., etc., et al., etc., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause. Simon J., took no part.

Very truly yours,

H. WAYNE RUSSELL

Clerk of the Supreme Court

APPENDIX C

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS-COUNTY DEPARTMENT-LAW DIVISION

BENJAMIN RASKY	)	
	)	
v.	)	No.78L 3424
	)	
COLUMBIA BROADCASTING SYSTEM, INC., et al	)	

ORDER

This cause coming on to be heard on various Defendants' Motions to Dismiss certain Counts of Plaintiff's Complaint and on Plaintiff's motion to vacate the Order of December 20, 1979 dismissing Count V with prejudice and substituting an Order striking Count V with leave to amend and on Plaintiff's motion for the Court to specify with particularity the reason for the orders of dismissal entered, all parties having due notice and the Court being fully advised in the premises.

It is hereby ordered that the Order of December 26, 1979 be vacated with regard to Count V and an order be entered dismissing Count V with leave to amend.

It is further ordered that as to Defendants Gloria Bittner and Edgewater Residents Together in Action, Count II is dismissed with prejudice and as to Counts III, IV and V are dismissed with leave to amend.

It is further ordered that as to Defendants Chicago Reader and Don Rose, Count VII is dismissed with prejudice.

It is further ordered that as to Defendant Organization of the Northeast Count II is dismissed with prejudice and Counts III and IV are dismissed with leave to amend and Count V is dismissed with prejudice for failure to state a cause of action for

conspiracy.

It is further ordered that the order of dismissal with prejudice except for Count V as to the Organization of the Northeast are based on the application of the Illinois Rule of Innocent Construction.

It is further ordered that Plaintiff be given leave to amend the remaining Counts by February 15, 1980 and Defendant be given leave to answer or otherwise plead by March 8, 1980.

The Court further finds that there is no just reason to delay enforcement or appeal of the Orders of Dismissal regarding those Counts dismissed with prejudice.

January 7, 1980

Johnson,Cusack & Bell,Ltd.
Attorney for Defendants
Volini,Walker and Edgewater
Community Council
1 North LaSalle Street
Chicago, Illinois 60602
372-0770

ENTER:

Judge Myron Gomberg

NO.

IN THE SUPREME COURT OF THE UNITED STATES

BENJAMIN A. RASKY,-Petitioner,
Plaintiff-Appellant,

-v-

CBS,INC.,a/k/a CBS-WBBM, et al.,-Respondents,
Defendants-Appellees.

NOTICE OF FILING PETITION FOR
WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT-FIRST DIVISION

TO: Reuben & Proctor,19 So.LaSalle St.,Chgo.,Il.
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Chicago, Illinois 60611
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120 So.LaSalle St.,Chicago,Il. 60606
Schiff,Hardin & Waite,233 So.Wacker Dr.,
Chicago,Illinois 60606
Camillo F. Volino,111 West Washington St.,
Chicago, Illinois 60602

YOU ARE HEREBY NOTIFIED that on July 23, 1982, I filed a Petition for Writ of Certiorari to the Appellate Court of Illinois.

DATED: July 23, 1982.

BENJAMIN A. RASKY, Pro Se
Attorney at Law
5104 West Weber Lane
Skokie, Illinois 60077

No. 82-180

Office - Supreme Court, U.S.
FILED
SEP 17 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BENJAMIN A. RASKY,

Petitioner,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNCIL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, a corporation, MARION VOLINI, LEROY BLOOMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITNER) DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INC., a corporation, and DON ROSE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FIRST DIVISION

BRIEF OF RESPONDENTS CBS INC. AND SUSAN ANDERSON IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BENJAMIN A. RASKY,

Petitioner,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNCIL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, a corporation, MARION VOLINI, LEROY BLOOMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITNER) DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INC., a corporation, and DON ROSE,

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TO THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FIRST DIVISION

BRIEF OF RESPONDENTS CBS INC. AND SUSAN ANDERSON IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Although Petitioner's statement of the case is insufficient, misleading and irrelevant, we will not restate the facts here; they are well stated in the opinion of the Illinois Appellate Court, 103 Ill. App. 3d 577, 431 N. E. 2d 1055, a copy of which is annexed to the Petition for Writ of Certiorari as Appendix "A." The one additional relevant fact, not apparent from that

opinion, is that the first time Petitioner raised a due process argument was in his initial brief to the Illinois Appellate Court, and there the words "due process" were merely stated, without argument or citation of authority as to how the proceedings in the trial court affected Petitioner's due process rights.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied because it presents no substantial federal question and because the decision below rests on adequate and independent state law grounds.

ARGUMENT

Petitioner's complaint in the trial court attempted to allege the state law torts of libel, trespass and invasion of privacy by private entities. The issues were governed solely by Illinois law. *See Paul* v. *Davis*, 424 U. S. 693, 698 (1976) ("Concededly if the same allegations had been made about respondent by a private individual, he would have nothing more than a claim for defamation under state law."). The trial court and the Illinois Appellate Court ruled Petitioner had failed to state a cause of action under Illinois law. The Illinois Appellate Court denied rehearing and the Illinois Supreme Court denied leave to appeal. The Illinois courts did not discuss or even mention "due process" under either the United States or Illinois Constitutions.

Petitioner now presents no substantial federal question, *Equitable Life Assurance Society* v. *Brown*, 187 U. S. 308, 311 (1902), nor does he show that the decisions below were not based on adequate interpretations of state law by the state courts, independent of federal constitutional concerns, *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935). *See also Murdock* v. *City of Memphis*, 87 U. S. 590, 629 (1875) ("merely *raising*" federal question is insufficient) (emphasis in original); R. Stern & E. Gressman, *Supreme Court Practice* 208-45 (5th ed. 1978).

Petitioner's chanting of the words "due process" does not transform this case into one subject to review by this Court, just as his mere mention of those words, without elaboration, for the first time in a brief to the Illinois Appellate Court failed to properly present a federal constitutional question. *See Bowe* v. *Scott*, 233 U. S. 658, 663 (1914). None of the courts below passed upon any due process issue, federal or state. In Illinois it has been held that constitutional questions raised but not passed upon by the lower court are not reviewable. *Midland Elec. Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200, 223-24, 115 N. E. 2d 275, 287 (1953). Moreover, under Illinois law, Petitioner's mere mention of "due process" in his appellate brief, without citation of authority or argument, precludes consideration of the argument. *Village of Roxana* v. *Constanzo*, 41 Ill. 2d 423, 426, 243 N. E. 2d 242, 244 (1968). This Court has deferred to such state law rules. *Beck* v. *Washington*, 369 U. S. 541, 552-53 (1962).

In essence, Petitioner appears to contend that the Illinois courts erroneously interpreted state law pleading rules governing the substantive elements of the torts of defamation, trespass and invasion of privacy. Even if this contention had been presented properly as a due process claim below, it is without substance. *See Paul* v. *Davis*, 424 U. S. 693 (1976).

CONCLUSION

For the foregoing reasons, we respectfully submit that the Petition for Writ of Certiorari should be denied.

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Office - Supreme Court, U.S.
FILED
SEP 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-180

In the

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OCTOBER TERM, 1982

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Petitioner.

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNSEL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, corporations, MARION VOLINI, LEROY BLOMMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITNER), DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INCORPORATED, a corporation, and DON ROSE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

BRIEF OF RESPONDENTS CHICAGO READER, INCORPORATED AND DON ROSE IN OPPOSITION

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The Scheffer Press, Inc.—(312) 263-6850

QUESTION PRESENTED

1. Whether the Appellate Court of Illinois, in applying well-established principles of Illinois defamation law to determine that Count VII of petitioner's complaint failed to allege a cause of action for libel, denied petitioner due process of law.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-180

BENJAMIN A. RASKY,

Petitioner,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNSEL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, corporations, MARION VOLINI, LEROY BLOMMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITNER), DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INCORPORATED, a corporation, and DON ROSE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

BRIEF OF RESPONDENTS CHICAGO READER, INCORPORATED AND DON ROSE IN OPPOSITION

STATEMENT OF THE CASE

Introduction

This cause was initiated by the filing of a five count complaint, supplemented by a two count amended complaint, against respondents in the Circuit Court of Cook County, Illinois. Count VII of the amended complaint sought damages for defamation against respondents Chicago Reader, Incorporated (the "Reader") and Don Rose ("Rose"), based on a newspaper article written by Rose and published in the *Reader* newspaper on November 11, 1977. The article, entitled "Why Ellis Levin Is A Marked Man," discussed various community issues and problems in Levin's legislative district. After Levin noted the importance of staying in touch with community problems and providing a resource through government to resolve them, the article stated:

> One agency he [Ellis Levin] recently got to do its job is the Illinois Department of Registration and Education, which licenses real estate operators but never saw fit to crack down on slum landlords until Levin lit the fuse. The result: for the first time in history a slum landlord operating in Uptown, Benjamin A. Rasky, is under the gun to fix up his places or lose his license.

Petitioner alleged that this statement constituted libel *per se.*

The basis for the two sentence reference to petitioner was a complaint filed by the Department of Registration and Education of the State of Illinois ("DRE") against petitioner for numerous building code violations on properties which he owned and operated. Following a hearing, the DRE revoked petitioner's real estate license. The DRE's decision was affirmed by the Appellate Court

of Illinois in *Rasky* v. *Department of Registration and Education*, 87 Ill.App.3d 580, 410 N.E.2d 69 (1980). This Court subsequently dismissed the petitioner's appeal for want of a substantial federal question. 102 S.Ct. 78 (1981).

The Decisions Below

In the present action, respondents Reader and Rose filed their motion to dismiss Count VII. Based upon its review of petitioner's complaint, respondents' motion and the briefs and oral arguments of all the parties, the trial court dismissed Count VII, with prejudice, holding that it failed to state a cause of action. The court applied the well-established Illinois "rule of innocent construction" and held that the allegedly defamatory statement was not libelous. On November 23, 1981, the Appellate Court of Illinois affirmed the trial court's dismissal, concluding

> that a proper application of the rule of innocent construction necessitates a finding that the term 'slumlord' or 'slum landlord' as used in the several publications, is susceptible of an innocent construction.

Rasky v. *Columbia Broadcasting System, Inc.*, 103 Ill. App.3d 577, 582, 431 N.E.2d 1055, 1059 (1981).

On February 1, 1981, the Appellate Court of Illinois denied petitioner's request for rehearing. On May 28, 1982, the Supreme Court of Illinois denied petitioner's request for leave to appeal the decision of the Appellate Court.

REASONS FOR DENYING THE WRIT

This case is wholly unremarkable in every respect. It is totally devoid of any unusual, novel, or significant issues of state or federal law. Petitioner's arguments are a mere rehash of points thoroughly considered, and properly rejected, by both the Illinois trial and appellate courts. Petitioner now seeks to have this Court review the allegations of his complaint to determine whether the allegations of Count VII state a cause of action under the Illinois law of defamation. However, this is a wholly insufficient basis upon which to invoke the certiorari jurisdiction of this Court.

The Petition satisfies *none* of the standards of Supreme Court Rule 17 for the granting of a writ of certiorari to review a state court judgment. The Illinois courts have not decided a federal question in a way which conflicts with the decision of another state or federal court. Nor have these courts decided an important question of federal law which has not been, but should be, settled by this Court.

In essence, petitioner makes the bare assertion that the decision of the Appellate Court is erroneous in its application of well-settled Illinois law and, therefore, the dismissal of Count VII deprives him of his constitutional rights. But, as will be demonstrated below, Illinois law is clear, and the decision of the Appellate Court in this case was correct. Under these circumstances, review by this Court is plainly unwarranted.

Moreover, it is a long-established principle that this Court will not review the decision of a state court which

presents no substantial federal question. *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955); *Zucht* v. *King*, 260 U.S. 174 (1922); *Millingar* v. *Hartupee*, 73 U.S. (6 Wall.) 258 (1867). It is equally well settled that the bare assertion of a constitutional claim utterly without foundation, or one so clearly and conclusively settled by prior decisions of this court so as to admit of no further argument, presents no substantial federal question. *Equitable Life Assurance Society* v. *Brown*, 187 U.S. 308, 314 (1902). Petitioner's assertion here that a due process question is raised by the action of the Illinois courts is groundless and unsupportable, being merely an attempt to seek this Court's review of questions of state law. *See Abbott* v. *National Bank of Commerce*, 175 U.S. 409 (1899), where this Court declared that the dismissal of a libel action on grounds of privilege raised no Fourteenth Amendment issue. *See also Boddie* v. *Connecticut*, 401 U.S. 381, 378 (1971) (no deprivation of due process to enter default judgment for failure to appear or failure to comply with procedural rules). Accordingly, this Court should deny this petition for a writ of certiorari.

I. The Appellate Court of Illinois Correctly Applied The Well Established Law of Illinois In Defamation Actions and Properly Concluded That Petitioner Had Not Stated A Cause Of Action In Libel.

The Appellate Court's holdings that petitioner failed to state a cause of action because the purportedly defamatory language could be innocently construed and was not libel *per se* is entirely consistent with established Illinois law enunciated decades ago.

A. The Respondents' Article Is Capable Of An Innocent Construction.

The principles of Illinois defamation law relied upon by the Appellate Court in affirming the dismissal of the allegedly libelous statement are long-standing. Illinois courts have consistently held that if an allegedly libelous article can be innocently construed upon any reasonable reading, it must be dismissed as nonactionable. *Valentine* v. *North American Co.*, 60 Ill.2d 168, 171, 328 N.E.2d 265, 267 (1974); *John* v. *Tribune Co.*, 24 Ill.2d 437, 442, 181 N.E.2d 105, 108, *cert. denied*, 371 U.S. 877 (1962); *LaGrange Press* v. *Citizens Publishing Co.*, 252 Ill.App. 482 (1929); *Young* v. *Richardson*, 4 Ill.App. 364 (1879). In *John*, the court stated:

> We further believe the language of defendant's article is not libelous of plaintiff when the innocent construction rule is consulted. That rule holds that the article is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law.

The meaning of the statement must be gathered not only from the words singled out, but from the context. *Bravo Realty, Inc.* v. *Columbia Broadcasting System, Inc.*, 84 Ill.App.3d 862, 406 N.E.2d 61 (1980); *Sloan* v. *Hatton*, 66 Ill.App.3d 41, 383 N.E.2d 259 (1978). Moreover, the words must be read in their best possible sense. *Wexler* v. *Chicago Tribune Co.*, 69 Ill.App.3d 610, 387 N.E.2d 892 (1979); *Dauw* v. *Field Enterprises, Inc.*, 78 Ill.App.3d 67, 397 N.E.2d 41 (1979). This rule applies irrespective of whether the plaintiff or anyone else can suggest other interpretations of the statement which might be

defamatory. Only if no possible innocent understanding of an article is reasonably conceivable may the court declare its words to be actionable. *Zeinfeld* v. *Hayes Freight Lines, Inc.*, 41 Ill.2d 345, 347-48, 243 N.E.2d 217, 227 (1968).

Applications of the innocent construction rule are legion. It has consistently been invoked by Illinois courts to uphold the dismissal of libel actions. *See, e.g., Valentine* v. *North American Co.*, 60 Ill.2d 168, 328 N.E.2d 265 (1974) (statement that an insurance company was discharging plaintiff because "He was a lousy agent"); *Tunnell* v. *Edwardsville Intelligencer, Inc.*, 43 Ill.2d 239, 252 N.E.2d 538, *cert. denied*, 397 U.S. 1021 (1970) (statement that a city attorney "was working to break the law"); *Cooper* v. *Rockford Newspapers, Inc.*, 50 Ill.App. 3d 247, 365 N.E.2d 744 (1977) (statement that a deputy clerk of the court was a "political hack," "hired in lieu of modernization and data processing"); *Jacobs* v. *Gasoline Retailers Association*, 28 Ill.App.3d 7, 328 N.E. 2d 187 (1975) (statement that reported a judgment of $4,435 against plaintiff, a business manager, in which he was pictured on a "wanted" poster); *Roemer* v. *Zurich Insurance Co.*, 25 Ill.App.3d 606, 323 N.E.2d 582 (1975) (statement that plaintiff made "sexual advances"); *Krass* v. *Froio*, 24 Ill.App.3d 924, 322 N.E.2d 67 (1975) (statement that the unknown powers in a trust will do anything to influence the outcome of an election and that people should ask plaintiff about the new home offered to a trustee just after his election); *Ashe* v. *Hatfield*, 13 Ill.App.3d 214, 300 N.E.2d 545 (1973) (statement that criticized plaintiff's work as a journalist); *Watson* v. *Southwest Messenger Press, Inc.*, 12 Ill.App.3d 968, 299 N.E.2d 409 (1973) (statement that plaintiff "fixed

parking tickets"); *Conrad* v. *Logan*, 4 Ill.App.3d 981, 283 N.E.2d 54 (1972) (statement that plaintiffs took money out of the company); *Lorillard* v. *Field Enterprises, Inc.*, 65 Ill.App.2d 65, 213 N.E.2d 1 (1965) (statement that plaintiff had obtained a "quickie divorce"); *Archibald* v. *Belleville News Democrat*, 54 Ill.App.2d 38, 203 N.E.2d 281 (1964) (statement expressing disgust at seeing a fourteen year old girl riding in a convertible "half-naked"); *Procsel* v. *Meyers Publishing Co.*, 24 Ill.App.2d 501, 165 N.E.2d 352 (1960) (statement that a public official was "diverting" funds from one project to another); *Kakuris* v. *Klein*, 88 Ill.App.3d 597, 410 N.E.2d 984 (1980) (statement that plaintiff executive, terminated from his job, had a lack of achievement in basic goals, did not have the qualifications needed to achieve professional objectives, and that sources "refused to comment" as to plaintiff's "honesty and integrity"); *Bravo Realty, Inc.* v. *Columbia Broadcasting System, Inc.*, 84 Ill.App.3d 862, 406 N.E.2d 61 (1980) (juxtaposition of plaintiff-realtor's advertising signs in midst of televised report on "panic peddling" and "blockbusting" in changing Chicago neighborhoods); *Andreani* v. *Hansen*, 80 Ill.App.3d 726, 400 N.E.2d 679 (1980) (statement that plaintiff land developers were greedy and that their conduct in refusing to sell land to village for badly needed park, thereby forcing condemnation proceedings, was disgraceful); *Van See Construction Company, Inc.* v. *Jensen & Halstead, Ltd.*, 79 Ill.App.3d 1084, 399 N.E. 2d 278 (1979) (statement that plaintiff, the general contractor on a public school renovation project, was not painting the building properly); *Anderson* v. *Matz*, 67 Ill.App.3d 175, 384 N.E.2d 759 (1978) (statement that plaintiff-physician's diagnosis of personal injury victim's condition was not worthy of consideration by insurance

company evaluating merits of personal injury lawsuit); *Bougadis* v. *Langefeld*, 69 Ill.App.3d 1010, 387 N.E.2d 965 (1979) (statement that plaintiff, the building commissioner for the Village of Berkely, had solicited contributions for Little League baseball from a local merchant in terms that sounded like "extortion").

As the Appellate Court recognized in this case, the *Reader* article accusing petitioner of being a "slum landlord" is unquestionably capable of an innocent construction. As properly reasoned by the court, "the terms 'slum landlord' and 'slumlord' can be construed to mean that plaintiff owned buildings in a poor and dirty neighborhood or, simply stated, that plaintiff was a landlord in a slum." The Appellate Court, in making this determination, correctly applied well-established Illinois law and review by this Court is simply unwarranted.

B. The Respondents' Article Is Not Libelous Per Se.

The Appellate Court also properly held that petitioner's claim was fatally defective because the two-sentence reference to petitioner simply did not constitute libel *per se*. Nothing in respondents' publication charges petitioner with either a serious crime involving moral turpitude or of unfitness in his profession as an attorney.

1. The Article Does Not Accuse Petitioner Of The Commission Of A Serious Crime.

For a publication to be libelous per se, the crime imputed must be either "infamous" or an indictable offense, involve moral turpitude, and be punishable by death or by imprisonment rather than by a fine. *Mitchell* v. *Peoria Journal Star, Inc.*, 76 Ill.App.2d 154, 160, 221 N.E.2d 516, 520 (1966); *Reed* v. *Albanese*, 78 Ill.App.2d 53, 60, 223 N.E.2d 419, 423 (1966).

Petitioner contends that the *Reader* article, referring to him as a "slum landlord," accuses him of engaging in criminal housing management under Illinois law. Petitioner is factually and legally wrong. At most, the statement in question does no more than imply generally that petitioner may have violated the building code, and later states that he may lose his real estate license because of such violations. Since violations of the building code are only punishable by fine, do not involve moral turpitude and do not constitute infamous crimes, respondents' statements are not libelous *per se* for imputing the commission of a crime. *See, e.g., Bruck* v. *Cincotta,* 56 Ill.App.3d 260, 264, 371 N.E.2d 874, 878 (1977) (charges of Chicago Municipal Code violations are not defamatory *per se* for imputing to plaintiffs the commission of a crime since violators are subject only to fine and have not committed an indictable offense involving moral turpitude) and *Mitchell* v. *Peoria Journal Star, Inc.,* 76 Ill.App.2d 154, 160, 221 N.E.2d 516, 519 (1966) (charge of violations of a municipal liquor ordinance for which a fine was imposed is not libelous *per se*). Again, the Appellate Court relied on well-settled Illinois law to conclude that respondents' article did not charge petitioner with either an infamous crime or one of moral turpitude and, therefore, could not support a claim for libel *per se.*

2. The Article Does Not Accuse Petitioner of Professional Unfitness As An Attorney.

Petitioner's claim of libel *per se* based upon the contention that respondents' publication accused him of professional unfitness as an attorney was also properly rejected by the Appellate Court.

It is well-established under Illinois law that in order for a statement to constitute libel *per se* for imputing professional incompetence, it must refer to the plaintiff in relation to his *particular* occupation. *See, e.g., Hambric* v. *Field Enterprises, Inc.,* 46 Ill.App.2d 355, 196 N.E.2d 489 (1964). In a license revocation hearing before the DRE, petitioner filed an affidavit in which he stated that the practice of law was his *sole* vocation from 1929 and that he has never entered into the real estate brokers business. Respondents' two sentence reference to petitioner is *silent* with respect to petitioner's competence as an attorney. In fact, it does not even suggest or imply that petitioner is an attorney. Therefore, based again upon established Illinois precedents, the Appellate Court properly concluded that

> Since none of defendants' statements alluded to plaintiff's qualifications or competence as a lawyer, we must reject plaintiff's contention that his professional fitness as a lawyer was attacked. See generally *Reed* v. *Albanese* (1966), 78 Ill.App.2d 53, 223 N.E.2d 419; *Hambric* v. *Field Enterprises, Inc.,* (1964) 46 Ill.App.2d 355, 196 N.E.2d 489.

In summary, petitioner clearly failed to state a claim for libel *per se* and review by this Court is simply not justified.

CONCLUSION

The petitioner suggests no valid reason why this Court should review the dismissal of his complaint. Petitioner's status as an aggrieved litigant whose claim has been rejected on the basis of settled legal rules is no different than that of numerous other disappointed suitors. Petitioner's unfounded assertions of error by the Appellate Court of Illinois do not suffice to invoke this Court's jurisdiction or to impose yet another round of appellate review upon these respondents. The Supreme Court of Illinois did not accept petitioner's appeal. This Court should similarly refuse petitioner's request for review. The well considered opinion of the Appellate Court of Illinois should be allowed to stand as the final disposition of this action. For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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